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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OTTER PRODUCTS, LLC,

Plaintiff,

v.

BH ELECTRONICS OF NY, INC.; and
BAROUKH BARAKAT both doing business as
"BHONESTOPSHOP;" and "JOHN DOES" 1-5;

Defendants.

CASE NO. 1:20-cv-04869 (AKH)



~~PROPOSED~~ FINAL JUDGMENT AND
INJUNCTION BY DEFAULT AGAINST
DEFENDANTS BH ELECTRONICS OF
NY, INC. AND BAROUKH BARAKAT,
BOTH DOING BUSINESS AS
"BHONESTOPSHOP"

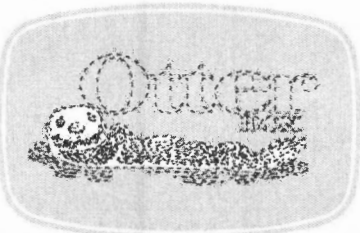
AKH


THIS CAUSE comes before the Court on the Motion of plaintiff Otter Products, LLC ("OtterBox") for the entry of a Final Judgment and Injunction by Default against defendant BH Electronics of NY, Inc. and defendant Baroukh Barakat, both doing business as "bhonestopshop" (hereinafter collectively referred to as "Defendants"). The Court, having considered all pleadings and other documents filed in this action, hereby directs the entry of this Final Judgment and Injunction by Default against Defendants. Accordingly, the Court does hereby **ORDER, ADJUDGE, AND DECREE** as follows:

1. This Court has jurisdiction over the subject matter of this action.
2. Venue is proper in the Southern District of New York.
3. Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with the laws of the State of New York, the United States Constitution, and Rule 4 of the Federal Rules of Civil Procedure.
4. OtterBox is the owner of, including, but not limited to, the following federal trademarks (hereinafter collectively referred to as the "Otter Products Registered Trademarks"), which are registered in the U.S. Patent and Trademark Office:

Trademark	Reg. No.	Reg. Date	Goods / Services
OTTER BOX	3,788,535	05/11/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
OTTERBOX	4,602,221	09/09/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, portable media players, tablets, personal digital assistants, e-book readers, and computers; protective covers and cases for computers.
DEFENDER SERIES	4,616,874	10/07/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for personal electronic devices, namely, cell phones.
COMMUTER	3,791,317	05/18/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
ON THE GO PROTECTION	5,044,003	09/20/2016	IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for mobile electronic devices, namely, smartphones, tablets, computers, e-book readers, portable media players; protective cases and covers with integrated batteries for use with mobile electronic devices, namely, smartphones, tablets, computers, e-book readers, portable media players; bags, folios and carrying cases specially adapted for mobile electronic devices, namely, smartphones, tablets, computers, e-book readers, portable media players; carrying cases, protective cases and stands

			featuring power supply connectors, adaptors, speakers and battery charging devices, specially adapted for use with mobile electronic devices, namely, smartphones, tablets, computers, e-book readers, portable media players; accessories specially adapted for smartphones, tablets, computers, e-book readers and portable media players, namely, mounting devices, tablet mounts and docking stations.
	3,791,318	05/18/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
COMMUTER SERIES	3,963,182	05/17/2011	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, multifunctional mobile phones, portable music players, portable video players and computers.
SYMMETRY SERIES	4,709,178	03/24/2015	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, portable media players, tablets, personal digital assistants, e-book readers, and computers.
 OTTERBOX CERTIFIED DROP + PROTECTION	4,990,232	06/28/2016	IC 009. US 021 023 026 036 038. G & S: Protective cases, covers and housings for personal electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players; protective cases and covers with integrated batteries for use with mobile electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players; display screen protectors for providing

			<p>protection, shade, and privacy specially adapted to personal electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players; protective display screen covers for personal electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players; headphones and headphone adaptors; accessories specially adapted for holding personal electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players, namely, belt clips, armbands; accessories specially adapted for personal electronic devices, namely, mobile phones, smartphones, tablets, e-book readers, and portable media players, namely, mounting devices, desk stands, tablet mounts, docking stations, table mounts, bar mounts and mount adapters.</p>
	4,293,603	02/19/2013	<p>IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.</p>

	5,356,304	12/12/2017	IC 009. US 021 023 026 036 038. G & S: Protective cases and covers for mobile electronic devices, namely, smartphones, tablet computers; protective cases and covers adapted to accommodate external accessories for use with mobile electronic devices, namely, smartphones, tablet computers; accessories specially adapted for use with protective cases and covers for smartphone, tablet computers, namely, batteries and power management systems in the nature of external batteries, battery boxes, and battery chargers.
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5. OtterBox is responsible for assembling, finishing, marketing, and selling in interstate commerce high-quality OtterBox merchandise, including but not limited to protective cell phone cases.

6. OtterBox is the exclusive distributor and warrantor in the United States of OtterBox merchandise, all of which bear one or more of the Otter Products Registered Trademarks.

7. OtterBox merchandise is identified by the trade name and trademark **OTTERBOX®** and one or more of the Otter Products Registered Trademarks.

8. OtterBox has used the Otter Products Registered Trademarks in the United States and in interstate commerce for many years.

9. The Otter Products Registered Trademarks are entitled to protection under the federal trademark laws and under the laws of the State of New York.

10. On June 25, 2020, OtterBox filed its Complaint against Defendants.

11. An examination of the Court's files and records in this case indicates that Defendants were served with the herein Summons and Complaint.

12. Defendants have failed to file an answer or otherwise defend this action, as required by law.

13. On August 17, 2020, defaults were entered by the Clerk of the Court against Defendants.

14. As a result of Defendants' default, Defendants are deemed to have admitted the allegations contained in OtterBox's Complaint.

~~AKH 15. Thus, the Court finds that Defendants are liable to OtterBox on all Counts of the Complaint. Therefore, Defendants are liable to OtterBox for willful and malicious trademark counterfeiting under federal law, 15 U.S.C. § 1114, et seq.~~

16. As a result of Defendants' unlawful conduct, OtterBox is entitled to the entry of a permanent injunction against Defendants. Accordingly, the Court hereby permanently enjoins and restrains Defendants and their employees, agents, servants, successors, and assigns, and all those acting in concert or participation therewith, from:

- a) using any counterfeit or infringement of the Otter Products Registered Trademarks to identify any goods not authorized by Plaintiff;
- b) counterfeiting or infringing the Otter Products Registered Trademarks by importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying any products bearing any simulation, reproduction, counterfeit, or copy of the Otter Products Registered Trademarks;
- c) using any simulation, reproduction, counterfeit, or copy of the Otter Products Registered Trademarks in connection with the importation, promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Plaintiff, or to any goods sold, manufactured, sponsored or approved by, or connected with Plaintiff;
- d) making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Defendants are in any way associated or connected with Plaintiff;

- e) engaging in any other conduct constituting an infringement of the Otter Products Registered Trademarks, of Plaintiff's rights in, or to use or to exploit, said trademark, or constituting any weakening of Plaintiff's names, reputations, and goodwill.

17. Pursuant to and in accordance with 15 U.S.C. § 1117(c), the Court hereby Orders Defendants to pay OtterBox the sum of ~~\$5,000,000~~ ^{\$100,000} as an award of statutory damages for Defendants' ~~willful acts~~ of trademark counterfeiting. Said award to OtterBox shall bear interest from the date of this judgment at the rate provided by law.

18. Pursuant to and in accordance with 15 U.S.C. § 1117 and applicable law, OtterBox shall also have and recover from Defendants: (a) costs incurred in this action in the sum of \$605.92, with interest thereon at the rate provided by law.

19. Within ten (10) days of the date of this Final Judgment and Injunction by Default, Defendants shall take all steps necessary to remove from all websites and/or accounts to which Defendants own or control, all text or any other media bearing Otter Products Registered Trademarks, or any marks confusingly similar hereto.

20. Within thirty (30) days of the date of this Final Judgment and Injunction by Default, Defendants shall file and serve OtterBox with a sworn statement setting forth in detail the manner and form in which Defendants have complied with this Final Judgment and Injunction by Default, including its injunctive provisions.

21. That Defendants be required to deliver up for destruction to OtterBox all unauthorized materials bearing any of the Otter Products Registered Trademarks in association with unauthorized goods or services and the means for production of same pursuant to 15 U.S.C. § 1118.

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~~22. Because the Court finds that Defendants' acts constitute willful and/or malicious injury to OtterBox and/or OtterBox's property under 11 U.S.C. § 523(a)(6), the sums awarded to OtterBox herein are not dischargeable in any bankruptcy proceeding filed by Defendants.~~

~~23. PayPal, Inc. is ordered to freeze all accounts associated with Defendants and any and all email addresses including but not limited to: bhelectronicsny@yahoo.com and exclusivecellular261@gmail.com and surrender any such frozen funds to OtterBox.~~

24. This Final Judgment and Injunction by Default, is deemed served on Defendants as of entry therein.

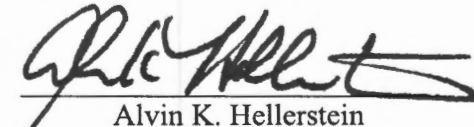
25. The terms of this Final Judgment and Permanent Injunction shall govern and bind the activities of the Defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation therewith.

26. All claims asserted against "John Doe" defendants are dismissed without prejudice.

27. All other claims asserted against Defendants are dismissed with prejudice.

28. This Court reserves and retains jurisdiction of the subject matter of this cause and of the parties hereto for the purpose of enforcing the terms of this Final Judgment and Injunction by Default.

Dated: 11-10, 2020


Alvin K. Hellerstein
United States District Court Judge